

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

4D FACTORY, INC., *et al.*,¹

Debtors.

:
:
: Chapter 11
: (Subchapter V)
: Case No. 23-11618 (MEW)
: (Jointly Administered)
:

-----X
THE 4D FACTORY LLC,

Plaintiff,

v.

MARK LONG, *et al.*,

Defendants,

:
:
:
: Adv. Proceeding No. 24-01319
:
: **STIPULATION AND ORDER**
: **FURTHER STAYING**
: **ADVERSARY PROCEEDING**
:

and

NEON MACHINE, INC., *et al.*,

Nominal Defendants.

:
:
:
:
:
:
:

-----X
AND ALL RELATED CONSOLIDATED ACTIONS
-----X

This stipulation, agreement and order (the “Stipulation”) is entered into by Mark Long, Colin Foran, Naomi Lackaff, Aaron Nonis, Don Norbury, Mark Yeend (collectively, the “Delaware Plaintiffs”); Calvin Zhou; Polychain Ventures II LP and Polychain Ventures II (Parallel) LP (collectively, “Polychain”); Griffin Gaming Partners II, L.P. and Griffin Gaming Partners II Side Fund, L.P. (collectively, “Griffin”); Pierre-Edouard Planche, Benjamin Perszyk, and Josh Rosenthal (collectively, the “Fund Directors,” and together with the Delaware Plaintiffs,

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC (8935).

Calvin Zhou, Polychain, and Griffin, the “Neon Parties”); The 4D Factory LLC (the “Debtor”);² and Cort Javarone, Scott Honour, and Steve Horowitz (together, the “Delaware Defendants,” and collectively with the Debtor and the Neon Parties, the “Parties” and each a “Party”). Subject to this Court’s approval (*see, e.g., Citibank, N.A. v. Revlon, Inc., et al.*, Adv. No. 22-01134 (DSJ) (Bankr. S.D.N.Y. Sept. 13, 2022), Dkt. No. 13 (approving stipulation and order to stay proceedings); *In re Garrett Motion Inc., et al. v. Honeywell Int’l Inc. et al.*, Adv. No. 20-1223 (MEW) (Bankr. S.D.N.Y. Jan. 15, 2021), Dkt. No. 36 (same)), the Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, the Parties previously entered into a stipulation agreeing to various deadlines in the above-captioned adversary proceeding (the “Adversary Proceeding”), which was so-ordered by this Court, *see* [Adv. ECF No. 7];

WHEREAS, on April 15, 2024, the Parties entered into an additional stipulation amending certain deadlines in the Adversary Proceeding while the Parties discussed a potential consensual resolution of the issue of Network Launch, which stipulation was so-ordered by this Court, *see* [Adv. ECF No. 25];

WHEREAS, on April 22, 2024, after reaching a consensual resolution in principle regarding the issue of Network Launch and certain related matters, and in order to effectuate the agreement in principle, the Parties entered a third stipulation staying the Adversary Proceeding and all deadlines therein, including deadlines related to discovery, until the earlier of April 30, 2024 or the filing of a notice by any Party that it seeks to lift the stay, *see* [Adv. ECF No. 28] (collectively with Adv. ECF Nos. 7 and 25, the “Scheduling Stipulations”);

² References to the Debtors are to the Debtor and 4D Factory, Inc., collectively.

WHEREAS, on April 26, 2024, the Debtors filed a *Motion for an Order Authorizing the Debtors and Neon Parties' Limited Agreement Over Network Launch* [ECF No. 94] (as amended at ECF No. 95, the "9019 Motion"), reflecting a consensual resolution between the Parties, and a *Motion to Schedule Expedited Hearing and Shorten Notice for Motion for an Order Authorizing the Debtors and Neon Parties' Limited Agreement Over Network Launch* [ECF No. 96];

WHEREAS, on May 3, 2024, the Court approved a further *Stipulation and Order Further Staying Adversary Proceeding* [Adv. ECF No. 33];

WHEREAS, on May 13, 2024, the Court entered an *Order Granting Motion and Approving the Debtors and Neon Parties' Limited Agreement Over Network Launch* [Adv. ECF No. 37], granting the 9019 Motion;

WHEREAS, in order to facilitate further discussions between and among the Parties that could lead to the resolution of the Adversary Proceeding in its entirety, the Parties wish to further stay deadlines in the Adversary Proceeding, including those so-ordered by the foregoing stipulations;

WHEREAS, a stay of the Adversary Proceeding will conserve the Parties' and the Court's resources and avoid potentially unnecessary litigation while the Parties engage in discussions to resolve the Adversary Proceeding or agree upon a revised schedule to litigate the Parties' claims in the Adversary Proceeding; and,

WHEREAS, the Parties agree that a stay of all proceedings and deadlines, including discovery, in the Adversary Proceeding is appropriate to foster discussions that may lead to further consensual resolutions regarding the claims brought in the Adversary Proceeding;

NOW, THEREFORE, UPON THE FOREGOING RECITALS, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE

**UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED
THAT:**

1. The Parties hereby stipulate to a continuance of the stay of the Adversary Proceeding (the “Stay”) and all deadlines therein for all Parties and third parties, including those in the Scheduling Stipulations, through and including June 30, 2024.

2. Subject to the Court’s availability, a status conference will be held during the week of June 17, 2024 (the “Status Conference”), during which the Parties shall update the Court as to the status of the Adversary Proceeding.

3. During the Status Conference, the Parties shall propose a new date for the pre-trial conference.

4. On or before June 14, 2024, the Parties shall file (a) a proposed order and (i) amended scheduling stipulation or (ii) stipulation extending the Stay, or, if the Parties are unable to stipulate to an amended schedule, (b) proposed litigation schedules for the Court’s consideration and approval.

5. The Parties further stipulate and agree that nothing herein shall be deemed a waiver of any rights, defenses, or arguments by the Parties.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the day and year first below written.

[Remainder of Page Intentionally Left Blank.]

Dated: May 21, 2024

By: /s/ Nicholas A. Bassett

Nicholas A. Bassett

PAUL HASTINGS LLP

2050 M Street NW

Washington, D.C. 20036

Telephone: (202) 551-1902

Email: nicholasbassett@paulhastings.com

Justin Rawlins

Edward Han

Timothy D. Reynolds

PAUL HASTINGS LLP

1999 Avenue of the Stars, 27th Floor

Century City, California 90067

Telephone: (310) 620-5700

Email: justinrawlins@paulhastings.com

edwardhan@paulhastings.com

timothyreynolds@paulhastings.com

Counsel to Mark Long, Colin Foran, Naomi Lackaff, Aaron Nonis, Don Norbury, Mark Yeend, Calvin Zhou, Pierre-Edouard Planche, Benjamin Perszyk, Josh Rosenthal, Polychain Ventures II LP, Polychain Ventures II (Parallel) LP, Griffin Gaming Partners II, L.P., and Griffin Gaming Partners II Side Fund, L.P.

By: /s/ Avi Moshenberg

Nick R. Lawson

Avi Moshenberg

LAWSON & MOSHENBERG PLLC

Telephone: (713) 449-9644

Email: nick.lawson@lmbusinesslaw.com

avi.moshenberg@lmbusinesslaw.com

Counsel for The 4D Factory, LLC, Cort Javarone, Scott Honour, Steve Horowitz, and Neon Media LLC

**The status conference will be held on
June 18, 2024 at 10:00 a.m.**

SO ORDERED

Dated: New York, New York

May 22, 2024

/s/ Michael E. Wiles

THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE